

# **Rule 3031, Policies and Procedures for Managing Requests for Information and Public Records enacted 10/06/1998, REPEAL**

## **Foreword**

This manual contains the general policies and procedures set forth by the Agency to expedite the availability, disclosure, and release of all appropriate records and information generated, developed, or held by the Mississippi Emergency Management Agency and the Mississippi Emergency Response Commission. These procedures are in accordance with Section 25-61-1, Mississippi Code of 1972, Annotated; otherwise cited as the Mississippi Public Records Act of 1983; and Section 324 and other applicable Sections of Title II of the Superfund Amendments and Reauthorization Act (SARA) of 1986; otherwise cited as SARA Title III and the Emergency Planning Community Right to Know (EPCRA) Act.

The policies and procedures defined herein will be stringently enforced in order to maintain compliance with the provisions of the Public Records Act and the Emergency Planning and Community Right to Know Act. This manual will be periodically reviewed, revised and maintained to meet current disclosure of information requirements.

## **I. — Disclosure of Information**

### **A. General**

This rule sets forth policies and procedures concerning the availability and disclosure of records and information held by the Mississippi Emergency Management Agency (MEMA) and the Mississippi Emergency Response Commission (MERC) in accordance with Section 25-61-1, Mississippi Code of 1972; the Mississippi Public Records Act of 1983; and Section 324, Title III Superfund Amendments and Reauthorization Act of 1986.

### **B. Application**

This policy supercedes previous policy regarding disclosure of information practices and replaces the Mississippi Emergency Response Commission (MERC) -2 Rule that was promulgated for purposes of complying with applicable sections of Title III (EPCRA) on December 15, 1987.

These procedures apply to all records and information materials generated, developed, or held by MEMA and the MERC, including but not limited to emergency response plans, material safety data sheets, inventory forms, toxic chemical forms and follow-up emergency notices.

### **C. Definitions**

For purposes relating to this disclosure policy and procedures, the following terms have the meanings ascribed to them in this Section:

1. ~~The “Act” shall mean the Mississippi Public Records Act of 1983 (Section 25-61-1, *et seq.*, Mississippi Code of 1972, as amended.)~~
2. ~~“Title III” shall mean Title III, Emergency Planning and Community Right to Know (EPCRA) of the Superfund Amendments and Reauthorization Act of 1986 (P.L. 99-499).~~
3. ~~The “Agency” shall mean the Mississippi Emergency Management Agency (MEMA) and the Mississippi Emergency Response Commission (MERC) synonymously since public records of both entities are held by MEMA.~~
4. ~~The “Director” shall mean both the director of the Mississippi Emergency Management Agency (MEMA) and the Chairman of the Mississippi Emergency Response Commission (MERC) since both positions are held by the same official appointed by the Governor (Executive Order 573).~~
5. ~~“Public Records” shall mean all books, records, papers, accounts, letters, maps, photographs, films, cards, tapes, recordings, or reproductions thereof, and any other documentary materials, regardless of physical form or characteristics, having been used, being in use, prepared, possessed or retained for use in the conduct, transaction or performance of any business, transaction, work, duty or function of any public body, or required to be maintained by any public body.~~
6. ~~“Public Body” shall mean any department, bureau, division, council, commission, committee, subcommittee, board, agency or any other entity of the state or a political subdivision thereof, and any municipal corporation and any other entity created by the Constitution or by law, executive order, ordinance, or resolution. Within the meaning of this chapter, the term “entity” shall not be construed to include individuals employed by a public body or any appointed or elected public official [MS Code 25-61-3(a)].~~

## **B. Availability of Records**

1. ~~Records are available to the greatest extent possible for keeping with the spirit and intent of the Act and will be furnished promptly to any member of the public. Agency information is available upon request addressed to the Director, Mississippi Emergency Management Agency (MEMA). The person making the request need not have a particular interest in the subject matter, nor must he/she provide justification for the request.~~
2. ~~The requirement that records should be available to the public refers only to records being at the time the request for them is made.~~



3. ~~Each emergency response plan, material safety data sheet, chemical list, inventory form, toxic chemical release form and follow-up emergency notice controlled by the Agency shall be made available to the general public, consistent with the Trade Secrets provision of Section 322 or Title III.~~
4. ~~A response to a request for Tier II data submitted in accordance of Section 312 of Title III, shall be made within fourteen (14) days after the date of receipt of such request.~~

### **C. ~~Exemptions~~**

~~Requests for Agency records may be denied if disclosure is exempted under the provision of Section 25-1-100, 25-61-9 and 25-61-11, Mississippi Code, 1972 or under the provisions of Section 312(e)(3)(c), 322, and 324 of Title III. Usually, except when a record is classified, or when disclosure would violate any other statute, the authority to withhold a record from disclosure is permissive rather than mandatory. The authority for nondisclosure will not be invoked unless there is compelling reason to do so.~~

### **D. ~~Records of Other Agencies~~**

~~If a request is submitted to the Agency to make available current records that are the primary responsibility of another agency, the Agency will refer the request to the agency concerned for appropriate action. The Agency will notify the requestor that the request has been forwarded to the responsible agency.~~

### **E. ~~Rules of Public Inspection and Copying~~**

1. ~~Location~~ ~~Records of MEMA and MERC are available for public inspection and copying at the Mississippi Emergency Management Agency, 1410 Riverside Drive, Jackson, Mississippi 39202 (P.O. Box 4501, Jackson, MS 39296-4501).~~
2. ~~Time~~ ~~Records will be made available for public inspection and copying during Agency normal business hours of 8:00 a.m. to 5:00 p.m. Monday through Friday.~~
3. ~~Reproducing Records~~ ~~The Agency will furnish reasonable copying services at fees specified in the Fee Schedule. Such reproduction services as are required will be arranged by the Administrative Section Chief.~~
4. ~~Handling of Records~~ ~~The unlawful removal, alteration, mutilation or destruction of records is forbidden by law and punishable by fine in accordance with Section 25-59-3, Mississippi Code 1972. Agency personnel will ensure that all materials provided for inspection and copying are returned in the same condition as provided.~~

## **~~F. Publications~~**

~~Anyone may obtain MEMA, MERC, EPA, or FEMA publications without charge in accordance with standard operating procedures, including limitation on numbers of specific individual publications. Videos and other training materials may be obtained on loan.~~

## **~~G. Exemptions from or Reduction of Fee~~**

- ~~1. When the Director determines that at least one of the following conditions exist, the fee requirements shall be waived and one copy of the Agency records shall be provided without charge to the requestor:~~
  - ~~a. When the incremental cost of collecting the fee would be an unduly large part of or an amount greater than the fee; a fee of less than \$10 is considered as meeting this requirement.~~
  - ~~b. When reproduction is for a state or local government or agency and furnishing it without charge is appropriate courtesy.~~
  - ~~c. When furnishing the records without charge conforms to generally established business customs, such as furnishing personal reference data to prospective employers or former employees.~~
- ~~2. When the Director determines that a waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefitting the general public.~~

## **~~H. Searches~~**

- ~~1. The time spent in the following activities may be computed in determining "search time" subject to applicable fees.~~
  - ~~a. Time spent in trying to locate records that come within the scope of the request.~~
  - ~~b. Direct costs involving the use of computer time to locate and extract requested records.~~

~~2. The time spent in the following activities may not be computed in determining search time subject to applicable fees.~~

~~a. Time spent in examining a requested record for the purpose of determining whether an exemption can and should be asserted.~~

~~b. Time spent in deleting exempt matter being withheld from records to be made available.~~

~~c. Time spent in monitoring a requestor's inspection of Agency records made available.~~

~~d. Time spent in operating reproduction facilities.~~

#### **~~I. Prepayment of Fees~~**

~~1. When a request for Agency records is received the requestor shall be notified of the requirement to prepay the anticipated fee prior to commencing a search or reproducing records. The Agency will remit the excess paid by the requestor or bill the requestor for an additional amount according to variations between the actual final fee charged and the amount prepaid.~~

~~2. When the Agency notifies a requestor of the necessity of prepaying as provided in paragraph 1., the Agency official also shall notify the requestor that the computation of the applicable time limits for Agency's response to an initial request for records or an appeal will be suspended from the mailing date of the notification of requirement to prepay until the receipt of prepayment.~~

#### **~~J. Form of Payment~~**

~~Payment shall be by check or money order payable to the Mississippi Emergency Management Agency.~~

#### **~~K. Fee Schedule~~**

~~In computing applicable fees, the Agency will consider only the following costs in providing the requested records.~~

~~1. Reproduction fees:~~



- a. ~~There will be a minimum fee of \$10.00 for each request for reproducing copies of Agency records up to six pages and including material 8-1/2 x 14 inches. The fee schedule is as follows:~~

Minimum fee.....	\$10.00
Forms per copy.....	\$ .25
Reports per page.....	\$ .25
Computer generated list per entry.....	\$ .25
Mailing labels on plain paper, per each.....	\$ .10
Mailing labels, per each.....	\$ .12

- b. ~~The fee for reproducing copies of Agency records over 8-1/2 x 14 inches or whose physical characteristics do not permit reproduction by routine electrostatic copying shall be the direct cost of reproducing the records through State or commercial sources.~~

2. Search Fee:

- a. ~~The standard fee shall be \$10.00 per hour or fraction thereof beyond the initial half-hour for clerical staff used to locate the requested records.~~
- b. ~~When supervisory staff must be used to search for the records because clerical staff would be unable to locate them, the search fee shall be \$15.00 per hour or fraction thereof beyond the initial half hour used to locate the requested records.~~
- c. ~~When the search includes non-personnel expenditures to locate and extract requested records, such as computer time or transportation expenses, the applicable fee shall be a direct cost to the Agency.~~
- d. ~~Time used for computer programming shall be \$15.00 per hour in addition to charges specified in (a) and (b). Charges for information formatted on a computer disk are \$55.00 per disk.~~

3. Postage and Handling fee

- a. ~~The minimum fee for postage and handling is \$2.50.~~

- b. ~~Applicable current rates, set by the United States Postal Service will be assessed for larger requests.~~

#### **~~L. Appeals Regarding Fees~~**

~~A requestor whose application for a fee waiver or a fee reduction is denied may appeal that decision to the Director in the same manner as prescribed for an appeal for denial of access to records.~~

#### **~~M. Described Records~~**

1. ~~The Agency shall promptly make the records available to the requestor pursuant to a request that reasonably describes such records unless the Agency invokes an exemption. Although the burden of reasonable description of the records rests with the requestor, the Agency will assist in identification to the extent applicable.~~
2. ~~Upon receipt of a request that does not reasonably describe the records requested, the Agency may contact the requestor to seek a more specific description. The fourteen (14) day limit set forth will not start until a request reasonably describing the records is received.~~

#### **~~N. Submission of Requests for Described Records~~**

~~For all records, requests shall be submitted in writing to the Director of the Mississippi Emergency Management Agency. Requests should bear the legend "*Public Record Request*" prominently marked on both the face of the request letter and the envelope.~~

#### **~~O. Review of Requests~~**

1. ~~Upon receipt of a request for information, the Director shall determine within 14 working days (excepting Saturday, Sunday, and legal public holidays) after receipt of any such request whether to comply with the request. The fourteen (14) day time limit for agency determination shall not start until a request is received in the office of the Director.~~
2. ~~If the request is approved, the Director will authorize either the Title III Program Manager (on matters relating to Title III records), the Public Relations Director (on requests from the media), or the Administrative and~~

Fiscal Division Director (on all other information requests) to promptly notify the requestor of the determination.

**~~P. Approval of Request~~**

~~When a request is approved, the Director will authorize the appropriate person specified in Section O, to make the requested records available as promptly as possible in accordance with the terms of the regulation. Copies may be furnished or the records may be inspected and copies made as provided herein.~~

**~~Q. Denial of Request for Records~~**

- ~~1. Only the Director, or the Deputy Director in the absence of the Director, shall have the authority to make denials of requests for disclosure of records.~~
- ~~2. If a request is denied, the Director shall, except as provided in Section T, Extension of Time Limits, advise the requestor within fourteen (14) days (excepting Saturday, Sunday, and legal public holidays) of receipt of the request and written reasons for the denial. The denial will:~~
  - ~~a. Describe the record(s) requested~~
  - ~~b. State the reasons for nondisclosure~~
  - ~~c. State the name and title or position of the official responsible for the denial of such request, and~~
  - ~~d. State the requestor's appeal rights.~~

**~~R. Delay in Processing Request~~**

~~In the event the Agency cannot locate the requested records, the appropriate person specified in Section O, will inform the requestor:~~

- ~~1. That the records have not been found, but~~
- ~~2. The Agency will review the request within a specified number of days when the search is expected to be completed. The letter will state the name and title or position of the official stating the reason for the delay. In such case, the requestor may file and Agency appeal immediately.~~



## **~~S. Appeal of Denial of Request~~**

- ~~1. A requestor denied access, in whole or part, to Agency records may appeal that decision to the Agency. All appeals should be addressed to the Director, Mississippi Emergency Management Agency, P.O. Box 4501, Jackson, Mississippi 39296-4501.~~
- ~~2. An appeal must be received by the Agency no later than thirty (30) calendar days after receipt by the requestor of the initial denial of access in the case of a total denial, or thirty (30) calendar days after the receipt by the requestor of records made available in the case of a partial denial.~~
- ~~3. An appeal must be in writing and should contain a brief statement of the reasons why the records should be released and enclose copies of the initial request and denial. The appeal letter should bear the legend "**PUBLIC RECORD REQUEST APPEAL**," conspicuously marked on both the face of the appeal letter and on the envelope. The Agency has twenty (20) days (excepting Saturday, Sunday, and legal public holidays) after the receipt of an appeal to make a determination with respect to such appeal. The twenty (20) day time limit shall not begin until the Director receives the appeal.~~
- ~~4. The Director shall turn over the appeal to the appropriate person specified in Section O. for review and recommendations. The Director or Deputy Director will make the final administrative determination in the absence of the Director.~~
- ~~5. The Director or Deputy Director shall be the deciding official on all appeals. In the absence of the Director and the Deputy Director, the Administrative and Fiscal Division Director, or in the case of a vacancy in that position, the Director may designate another Agency official to perform this function.~~
- ~~6. If an appeal is filed in the response to a tentative denial pending location and/or examination of records, the Agency will continue to search for and/or examine the requested records and will issue a response immediately upon completion of the search and/or examination. Such action in no way suspends the time for the Agency's response to the requestor's appeal which the Agency will continue to process regardless of the response under this subsection.~~

- ~~7. If requestor files suit pending an Agency appeal, the Agency nonetheless will continue to process the appeal and will finish a response within the twenty (20) day time limit set out in this Section.~~
- ~~8. If, on appeal, the denial of the request for records is in whole or in part upheld, the Director will promptly furnish the requestor a copy of the ruling in writing within the twenty (20) day time limit set out in this Section. The notification letter shall contain:~~
  - ~~a. A brief description of the record or records requested~~
  - ~~b. A statement of the legal basis for nondisclosure~~
  - ~~c. A statement of the name and title or position of the official(s) responsible for the denial of the initial request and the denial of the appeal as described~~
  - ~~d. A statement of the requestor's rights of judicial review~~

#### **~~T. Extension of Time Limits~~**

~~In unusual circumstances, as specified in this Section, the time limits prescribed above may be extended by the Director who will provide written notice to the requestor setting forth the reasons for such extension and the date on which a determination is expected. Such notice will specify no date that would result in an extension of more than ten (10) workdays. The Director may allow more than one extension, divided between the initial request stage and the appeals stage, but in no event will the combined periods of extension exceed ten (10) workdays. As used in this subsection, "unusual circumstances" includes only those circumstances where extension of time is reasonably necessary to the proper processing of the particular request. Examples include:~~

- ~~1. The need to search for and collect the requested records from the facilities or other establishments that is separate from the office processing the request; or~~
- ~~2. The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or~~



- ~~3. The need for consultation, which shall be conducted with all practicable speed, with another Agency or with a source having a substantial interest in the determination of the request or among two or more components of the Agency having substantial subject matter interest therein.~~

#### **~~U. Exhaustion of Administrative Remedies~~**

~~Any person making a request to the Agency for records under this part shall be deemed to have exhausted his/her administrative remedies with respect to the request if the Agency fails to comply with the applicable time limit provisions set forth above.~~

#### **~~V. Judicial Relief Available to the Public~~**

~~Upon denial of the requestor's appeal by the Director, the requestor may institute a suit in the Chancery Court of Hinds County in which the public body is located as provided in Section 25-61-13, Mississippi Code, 1972, as amended.~~

#### **~~W. Penalty for Noncompliance~~**

~~In the event of noncompliance by the Agency with an order of the Chancery Court, the Chancery Court may punish the Agency employee responsible for the noncompliance, pursuant to Section 25-61-15, Mississippi Code, 1972, as amended.~~